

CITY AND COUNTY OF SAN FRANCISCO



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June 29, 2020

Via Email Only

Paula Carney
General Counsel
Archdiocese of San Francisco
Email: CarneyP@sfarch.org

Re: Cease and Desist Violations of Health Order: Opening of San Francisco
Churches for Indoor Public Mass and Lack of Face Coverings and Physical
Distancing for Outdoor Services

Dear Ms. Carney:

As you know, my office represents the City and County of San Francisco, including its Health Officer Dr. Aragón, who has issued a stay-safe-at-home order and related health orders to protect the residents of this City during this unprecedented COVID-19 pandemic. (See <https://www.sfdph.org/dph/alerts/coronavirus-healthorders.asp>.) Dr. Aragón understands and respects the importance of religion to the spiritual well-being and mental health of many, and accordingly has encouraged San Franciscans to continue to practice their religious faith in all ways that are safe. It is for this reason that the Health Officer issued a revised health order on June 11, 2020 (Order of the Health Officer No. C19-07e, the "Health Order"), which allows for in-person outdoor services conducted according to science-based safeguards that will minimize the risk of COVID-19 transmission.

Unfortunately, and contrary to increasing medical evidence that religious services without safeguards have caused serious outbreaks in many other cities and counties throughout the country, the Archdiocese has conducted both indoor and outdoor gatherings over the past three weekends that violate the Health Order and jeopardize the health and safety of San Franciscans. These large gatherings of people indoors for a long period, in some instances reported without face coverings and with singing, place clergy, staff, volunteers and congregants alike at heightened risk of transmission of COVID-19, which can lead to serious illness and even death, and endangers the health of the Archdiocese's parishioners and the entire community. Given the recent rise in cases and hospitalizations, Dr. Aragón's concerns about these risks have only been heightened.

More particularly, the City understands that Archbishop Cordileone informed all parishes and other worship sites in the Archdiocese, including San Francisco, that they could resume public Mass on Sunday, June 14, 2020. Upon learning of this direction to the parishes my office sent the Archdiocese an email on Thursday, June 11, 2020 (attached) seeking more information and making sure that the Archdiocese was aware of the San Francisco Health Officer's determination that indoor services with congregants continue to pose a serious public health risk and are consequently prohibited under the Health Order for the time being, with a narrow exception for funerals with 12 or fewer persons and an exception for live streaming services with

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12 or fewer personnel in attendance to facilitate the live streaming. On June 12, the Archdiocese responded by sending my office the Archdiocese's safety protocols for opening public Mass.

In a good faith effort to resolve this dispute and to try to work together to ensure the health and safety of San Franciscans, my office worked with you to set a June 19 meeting between the Health Officer, Dr. Aragón, and Archbishop Cordileone. This seemed to be a productive call. When Dr. Aragón and Archbishop Cordileone spoke again on June 23, Dr. Aragón informed the Archbishop that he planned to issue a revised order that would allow for larger outdoor services and general indoor services (not just funerals) limited to 12 attendees, subject to safety and social distancing protocols, which would be effective June 29.

Notwithstanding Dr. Aragón's statements about June 29, which were widely publicized in the press, the Archdiocese asserts that it understood that such services would be allowed immediately. But on Thursday June 25, my office's General Counsel for the Department of Public Health, Julie Van Nostern, informed the Archdiocese in writing that no changes in the Health Order had yet been made. She asked for confirmation that the Archbishop informed parishes not to open over the weekend for indoor services. The Archdiocese responded by informing Deputy City Attorney Van Nostern that the Archdiocese had informed its parishes that indoor services could resume immediately.

Unfortunately, the virulence of COVID-19 has been persistent, and our health indicators have taken a turn for the worse. We learn daily of the increasing devastation that this disease is wreaking in many states across the nation, and in many California counties. This increase in transmission is also evident in the data collected by the San Francisco Department of Public Health, which shows rising COVID-19 counts in our own city, quite apart from the transfers of other seriously ill patients that San Francisco hospitals have accepted from other counties under mutual aid programs. The Health Officer carefully analyzed the San Francisco data and, acting under his duty to protect the health and lives of San Franciscans from the ravages of this disease, determined that a more permissive health order was too risky and unsafe at this time. Through the reopening process, Dr. Aragón and other City officials in their many public statements (including descriptions of the process in the City's COVID-19 website) made clear that each phase of reopening depends on whether the COVID-19 health indicators support moving forward. (See e.g., <https://sf.gov/topics/reopening>, and <https://www.sfdph.org/dph/alerts/files/Stay-Safe-at-Home-COVID-19-FAQs.pdf>.) Consistent with these statements, Dr. Aragón decided to put a pause on the entire planned reopening phase, including a number of other additional businesses and additional activities, while he and DPH medical professionals evaluate the data and decide what steps are necessary to address the situation.

Accordingly, on Friday June 26, my office informed the Archdiocese that the planned revised order that would have allowed small indoor services and larger outdoor services (among other loosened restrictions), would be delayed. Likewise, Dr. Aragón spoke with Archbishop Cordileone. The City sought the Archdiocese's assurance that it would notify the parishes that no indoor services would be allowed until the order was revised. The Archdiocese refused to provide assurances that it would protect public health by complying with the safeguards in the Health Order, and instead asserted that the Archdiocese "relied on the representations of the Health Officer." We disagree that such unqualified representations were made. On Saturday June 27, Deputy City Attorney Van Nostern again wrote to reiterate that, due to increasing COVID-19 case counts in San Francisco, indoor services continued to be prohibited, and provided the relevant Health Order and Health Directives. Whatever misunderstanding the Archdiocese may have had on June 23 regarding the public health requirements in force in San Francisco, my office has repeatedly made clear the Archdiocese's public health obligations.

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Contrary to these legal duties, it now appears that the Archdiocese has gone forward and held multiple indoor large gatherings at its facilities, which not only violate the Health Order but also evidence an alarming failure to follow common-sense safety protocols. Over the past few weeks, the City has received multiple public complaints about churches opening to the public as of Sunday June 14. For example:

- On Saturday June 13, a member of the public submitted a complaint that St. Francis of Assisi at 610 Vallejo Street had signs on the sidewalk advising that public Mass would resume on Sunday June 14.
- On Sunday June 14, the City received multiple complaints that Ss. Peter & Paul Church at 666 Filbert Street held public Mass six times and people were coming in and out of the church, cars were coming in and out of the parking lot, and the main doors were open to the public.
- The City also received a complaint that, on Sunday June 14, the Star of the Sea located at 4420 Geary Boulevard opened for Mass. This is confirmed in the church's bulletin and in a video posted on YouTube of the sermon given where neither the priest giving the sermon nor the altar boy are wearing face coverings. See <https://www.youtube.com/watch?v=AuI19Zre2p8>. The same complaint alleged that a priest from Star of the Sea led a procession on June 8 without wearing a face covering. The blog of Father Joseph Illo confirms that a large outdoor gathering was held on June 8 for a family rosary. Most concerning is a photograph in the blog that shows a priest without a face covering and most parishioners without face coverings.

Based on these complaints, my office directed one of our investigators to survey several Catholic Churches on Sunday June 21 and Sunday June 28. During these visits, the inspector confirmed the following:

- On Sunday June 21, St. Mary of the Assumption located on 1111 Gough Street held indoor Mass. On Sunday June 28, St. Mary of the Assumption held indoor Mass and the investigator counted 23 people in attendance. The priest was not wearing a face covering nor was the man who did the first reading.
- On Sunday June 21, Star of the Sea held indoor Mass, and the priest conducting the Mass was not wearing a face covering. On Sunday June 28, at least 25 parishioners gathered inside the church and a staff member and the altar boys were not wearing face coverings. The parishioners were then led outside for a service. The priest at the Star of the Sea who led an outdoor Mass was not wearing a face covering nor were the other people helping him, including a man carrying a large cross and the two altar boys. On Monday June 22, the City received a complaint that St. Cecilia Church located on 2555 17th Avenue held Mass on Sunday June 21, where "people were gathering outside and inside as if Covid didn't exist." The church's website confirms that two public Masses were held on Sunday June 21, and that daily public Masses are held once per day.
- While as of Sunday June 28, Ss. Peter & Paul Church at 666 Filbert Street has posted a sign indicating that no Sunday Mass will be held, its website states that it will continue to celebrate public Masses twice a day Monday through Saturday. See <https://parish.sspeterpaulsf.org>.

The Archdiocese's persistence in conducting these gatherings is unsafe and violates the Health Order. Indoor gatherings are not currently permitted by the San Francisco Health Officer,

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and while that may change in the near future if health conditions improve there is no exception for in-person religious services with congregants save funerals, now limited to 12 people (the complaints we have received were for services other than funerals). See Health Order C19-07e.

Again, while the Health Officer recognizes the importance of religious services to many for spiritual health especially during these challenging times, he maintains that such indoor gatherings present a high risk of virus transmission because of the duration and intensity of contact and that by this conduct the Archdiocese is jeopardizing public health, including members who are among vulnerable populations. In most religious services people are together for a long time and likely to touch seats, pews, and other objects. Further, singing at church services, even if limited, poses a serious health and safety risk because it can transmit particles farther in the air than breathing or speaking quietly. Indeed, the current Health Order requires that when a facility live streams singing, the singer must be in an isolation booth or in a separate room from others in the facility while singing. See Appendix C1.7.b of the Health Order. There are many examples of virus transmission and even hospitalizations and deaths from COVID-19 that was spread during gatherings at religious services. See, for instance, these recent reports:

- <https://www.latimes.com/california/story/2020-05-18/mendocino-county-church-service-linked-to-coronavirus-cluster> (a cluster of COVID-19 cases occurred after an in-person church service involving singing in Mendocino County);
- <https://www.cdc.gov/mmwr/volumes/69/wr/mm6920e2.htm> (at least 35 attendees at a rural Arkansas church developed laboratory-confirmed COVID-19 and three people died);
- <https://abcnews.go.com/Health/wireStory/church-tied-oregons-largest-coronavirus-outbreak-71289210> (a church in Oregon is currently the epicenter of that state's largest coronavirus outbreak with 236 COVID-19 cases tied to the church as reported on June 16, 2020);
- <https://wchstv.com/news/local/eighth-coronavirus-case-associated-with-boone-county-church-confirmed> (at least eight cases are connected to a church in West Virginia); and
- <https://www.cdc.gov/mmwr/volumes/69/wr/mm6919e6.htm> (following a 2.5-hour choir practice at a Washington church in May that was attended by 61 persons, 32 confirmed and 20 probable secondary COVID-19 cases occurred (attack rate = 53.3% to 86.7%), three patients were hospitalized, and two died).

Upon reviewing the reports of multiple San Francisco parishes holding indoor Mass over the last few weeks, the Health Officer has concluded that the Archdiocese is putting not only its parishioners but the larger community at risk of serious illness and death. Dr. Aragón finds quite troubling the failures to comply with the Face Covering Health Order that are endangering not only parishioners, but particularly the children who serve as altar boys.

We reviewed the Archdiocese's protocol for Mass that you sent us on June 12, 2020. While it is unsafe at this time to hold indoor Mass with parishioners, we have provided these plans to the Health Officer for his consideration as he prepares for future re-opening phases, based on local COVID-19 indicators, and determines what activities can be conducted safely with health precautions. That protocol may help guide future allowance in revisions to the Health Order for religious services for all faiths.

But we disagree with the Archdiocese's claim that its safety protocol is more stringent than City protocols or State guidelines. The Archdiocese's claim is not accurate in several

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important respects. First, the Health Officer's Order prohibits these indoor gatherings because they are unsafe; the Archdiocese holding these proceedings at all makes San Franciscans less safe. Second, the Archdiocese's protocols – contrary to our public health officials' universal advice that wearing a face covering is one of the most important measures to prevent community spread and the requirements of the Health Order and companion face covering order (Order of the Health Officer No. C19-12b) – specifically directs liturgical ministers to not wear them. There is no exception for liturgical ministers to not wear a face covering and, in fact, when indoor services do resume, it will be particularly critical that religious leaders wear them. See Order of the Health Officer No. C19-12b.3. Third, as discussed above, City guidelines also require singers to be in isolation booths or in a separate room from others while singing. While the Archdiocese's protocols admit to some limitations on singing, these would not adequately mitigate the heightened risks attendant to singing.

Finally, as for the State guidelines, on June 12, 2020, the California Department of Public Health issued guidance for places of worship and providers of religious services and cultural ceremonies. See <https://covid19.ca.gov/pdf/guidance-places-of-worship.pdf>. The guidance differs from the Archdiocese's protocol on some matters and addresses issues that the Archdiocese's guidance has not addressed. For example, the state order requires symptom screening for staff. Further, beyond requiring at least six-foot social distancing between parishioners, State guidance also requires limiting attendance at indoor services to 25% of building capacity but no more than 100 in any case. The State guidance also addresses childcare during services, which is missing from the Archdiocese's protocol.

Most importantly, State guidance is clear that, even with physical distancing, indoor services are risky. "It is strongly recommended that places of worship continue to facilitate remote services and other alternatives to in-person religious practice for those who are vulnerable to COVID-19 including older adults and those with co-morbidities. Even with adherence to physical distancing, convening in a congregational setting of multiple different households to practice a personal faith carries a relatively higher risk for widespread transmission of the COVID-19 virus, and may result in increased rates of infection, hospitalization, and death, especially among more vulnerable populations. In particular, activities such as singing and group recitation negate the risk-reduction achieved through six feet of physical distancing." See <https://covid19.ca.gov/pdf/guidance-places-of-worship.pdf>, on page 3.

The Archdiocese has asserted that the State of California has authorized its services. This assertion is incorrect. While the State has promulgated its protocols that set a general baseline for rural and urban counties alike, this does not mean that the Archdiocese can simply adopt the State protocols and go forward in San Francisco, lawfully or safely. The Governor and the State Health Officer have repeatedly recognized the authority of local officials to exercise medical judgment based on local health conditions, and require more strict limitations than State protocols, which simply set a statewide "floor," and it is up to the individual counties to determine what is safe based on their local conditions. When both the State and a county have issued health regulations, the more protective provision governs, which here is San Francisco's Health Order. See Health Order C19-07e.14.

We acknowledge and appreciate that other religious organizations are complying with the San Francisco Health Order. For example, there was a recent complaint about an Eastern Orthodox Church, but the church agreed to livestream its services with under 12 service leaders in attendance and no congregants, consistent with San Francisco's Health Order. And most congregations throughout the City comprising a wide array of houses of worship are abiding by

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the Health Order and doing their part to help protect their congregants and our entire community from the risk of COVID-19. For the sake of the greater good, and promoting alternative ways to practice faith, these groups of faith are delaying resuming in-person, indoor services. This is important because the more all organizations and individuals in San Francisco comply with the Health Order the greater the ability of the City to contain the virus and move forward with reopening.

In light of this, it is disconcerting that the Archdiocese has accused Dr. Aragón of “reneging on commitments” to the Archdiocese. Such an accusation has no place here. Dr. Aragón’s paramount commitment is to ensure the health and safety of all San Franciscans, including the Archdiocese’s parishioners. Dr. Aragón could never, and has never, promised any institution or group – the Archdiocese included – that an understandable wish for a return to normalcy will be fulfilled, no matter how risky the COVID-19 environment. It is unfortunate that the Archdiocese misunderstood Dr. Aragón’s sharing of the City’s hoped-for plans, as a promise to disregard public health data and science.

We remind the Archdiocese that the Health Order in no way prohibits religious services; it simply sets reasonable nondiscriminatory health and safety restrictions on the place and manner of gatherings. As previously mentioned, the revised Health Order updated on June 11 permits outdoor services of up to 12 people, subject to certain health protocols including face coverings and physical distancing. And funerals, including indoor funerals, are allowed for up to 12 leaders and mourners. Religious services may continue to be live-streamed to congregants, as they have since the beginning of our sheltering in place, so long as the number of people involved in the service and streaming it is no more than 12 people total, the place of worship is closed to the public and no congregants are involved, physical distancing is observed, and singers perform in isolation booths or in a room separated from others. Parishioners without internet may also call into a service that can be placed on speaker phone. As we have already stated, the Health Officer will continue to re-evaluate these restrictions based on the COVID-19 data for our community. Even the State order encourages these alternatives to in-person services for people who wish to practice their religious faith, at least during this time where the virus is still very much a health risk to the community.

The Archdiocese includes many valued leaders in our community, who we know care deeply not only about the spiritual, mental, and physical health of their congregants but also about the health and safety of all San Franciscans. We look to you as partners and expect your compliance with the Health Officer Order Nos. C19-07e and C19-12b. Please confirm by 5 p.m. on June 30, 2020 that the Archdiocese will cease offering indoor religious services, except for funerals with up to 12 attendees and except for live streaming as described above; and further that the Face Covering requirements and Social Distancing Requirements of those orders will be followed at all outdoor services. Without your assurance that you intend to comply with these critical Health Orders, we will pursue a Temporary Restraining Order to protect your parishioners and the broader community.

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Finally, as Dr. Aragón has repeatedly expressed to the Archbishop, we welcome your cooperation on developing plans for opening regular indoor services with appropriate precautions, when, in the Health Officer's medical judgment, it can be done safely.

Very truly yours,

A handwritten signature in black ink, appearing to read "D.J. H", with a stylized flourish at the end.

DENNIS J. HERRERA
City Attorney

cc: Dr. Tomás Aragón